

1 IN THE UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4)
5 TERESA L. RIBELIN COOK,)
6 Plaintiff,)
7 VS.) CIVIL ACTION NO.
8) 4:19-CV-1495
9 HARRIS COUNTY, KIM OGG,)
10 JOHN BREWER, AND BRYAN VACLAVIK) 4:43 P.M.
11)

12 MOTION HEARING
13 BEFORE THE HONORABLE KEITH P. ELLISON
14 APRIL 29, 2019

15 APPEARANCES:

16 **FOR PLAINTIFF:**

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22 **FOR DEFENDANTS:**

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15 **ALSO PRESENT:**

16 MS. TERESA RIBELIN COOK
17 MR. BRYAN VACLAVIK

18 **COURT REPORTER:**

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24 Proceedings recorded by mechanical stenography, transcript
25 produced by computer.

16:43:26 1 **THE COURT:** Good afternoon and welcome. We'll turn to
2 Cook versus Harris County and take appearances of counsel,
3 beginning with plaintiff.

16:43:32 4 **MR. DURRSCHMIDT:** Good afternoon, Your Honor. Michael
5 Durrsschmidt on behalf of Ms. Cook, and Ms. Cook is present in
6 the courtroom.

16:43:38 7 **THE COURT:** Welcome.

16:43:40 8 **MR. DOUGLAS:** Your Honor, Allen Douglas, county
9 attorney's office, on behalf of Scott Durfee and other
10 defendants, Harris County.

16:43:49 11 **MR. DURFEE:** Technically, Judge, I'm not a defendant.

16:43:52 12 **MR. DOUGLAS:** That's true.

16:43:53 13 **MR. DURFEE:** Scott Durfee, general counsel for the
14 district attorney's office. Mr. Berg and I are here, as well.

16:44:00 15 **THE COURT:** Yes. I know Mr. Berg. Welcome.

16:44:02 16 Welcome to all of you.

16:44:05 17 **MR. BERG:** Thank you.

16:44:05 18 **THE COURT:** Okay. This does not seem like it needed
19 to be a major piece of litigation. It seems like we could work
20 this out and accommodate both the investigatory interest of the
21 county and your client's absolutely legitimate privileged
22 issues.

16:44:26 23 I mean, have you talked? It seems like something we
24 could reason through together this afternoon and get everybody's
25 interest taken care of.

16 : 44 : 34 1 **MR. DURFEE:** Yes, Your Honor. I called
2 Mr. Durrschmidt about a week and a half or so ago and told him
3 that there's a mechanism in state court for these privilege
4 reviews under Article 1812, Code of Criminal Procedure. We're
5 standing by ready to do that.

16 : 44 : 47 6 We're -- you know, these -- this is not an unusual
7 situation. We just -- we just need to balance the privilege
8 issues against relevancy in the criminal proceeding, and the
9 state district judge is perfectly suited to handle that matter.

16 : 45 : 07 10 **MR. DURRSCHMIDT:** Your Honor, the -- the state here is
11 looking at a retainer issue, the payment of retainer at the very
12 beginning of the case.

16 : 45 : 18 13 **THE COURT:** I got that.

16 : 45 : 19 14 **MR. DURRSCHMIDT:** And they've seized the entire file,
15 and they -- they have no reason to hold the file. We're not
16 going to waive our privilege. We're not going to waive our
17 right of privacy.

16 : 45 : 28 18 They need to turn the entire file back to us. They
19 already have all the information they need. They have the bank
20 records. They have the financial records of the firm. We're
21 not talking about those. We're talking about --

16 : 45 : 39 22 **THE COURT:** Have you had this discussion with
23 Mr. Douglas?

16 : 45 : 42 24 **MR. DURRSCHMIDT:** No. Basically, Mr. Douglas told me
25 I could go somewhere else and deal with this, and we have not

1 had a meaningful conversation whatsoever.

16 : 45 : 53 2 **MR. DOUGLAS:** Your Honor, I'll just note that I was
3 brought in on Friday.

16 : 45 : 56 4 **THE COURT:** Okay. Sorry. The conversation was with
5 somebody else. I apologize. I apologize.

16 : 46 : 02 6 Have you had the conversation with anybody on
7 defendant's side of the case?

16 : 46 : 05 8 **MR. DURRSCHMIDT:** I had the one conversation after I
9 sent the letter asking for the file back.

16 : 46 : 09 10 **THE COURT:** With Mr. Brewer?

16 : 46 : 12 11 **MR. DURRSCHMIDT:** With --

16 : 46 : 13 12 **MR. DURFEE:** Mr. Durfee, Your Honor.

16 : 46 : 15 13 **MR. DURRSCHMIDT:** And the sum total of that
14 conversation was: You can bring this up in front of the state
15 court, and we'll go deal with it there. And when I asked him
16 why it was that they thought they could hold the files, he said,
17 "I'm new to the thing. I don't know anything about it," and we
18 had no substantive discussion about it.

16 : 46 : 38 19 But she's entitled to proceed with her state court
20 divorce action. She can't do that right now.

16 : 46 : 44 21 **THE COURT:** I'm entirely sympathetic to your position.
22 I really am. I'm just trying to see if there's not a way we can
23 accommodate both sides' interests.

16 : 46 : 52 24 **MR. DURFEE:** Sure, Judge. I mean, we've offered up --
25 previous counsel had been offered up an opportunity for a taint

1 team to review these things and get these things in a posture.
2 Also, we're perfectly willing, at this point, to make a copy of
3 all the files that she --

16:47:05 4 **THE COURT:** Why do you need the file, other than the
5 retainer?

16:47:08 6 **MR. DURFEE:** It's going to be a continuation of the
7 criminal investigation. Ms. -- Mr. Woodfill, her attorney, is
8 currently accused -- at least under investigation for
9 misapplication --

16:47:18 10 **THE COURT:** I understand that. I understand that.
11 But the -- the -- in divorce actions, a lot about property
12 division and -- is there children involved?

16:47:25 13 **MR. DURRSCHMIDT:** There is.

16:47:26 14 **THE COURT:** -- and children, and it doesn't really
15 speak to the question of application of funds. If you have the
16 information about the payment and whatever retention letter
17 there is, why do you need anything -- details about the divorce?

16:47:39 18 **MR. DURFEE:** Well, Judge, again, I'm not in the
19 posture to speak to the merits of the investigation. I did
20 bring Mr. Vaclavik, who is the chief fraud examiner for our
21 office and also one of the named defendants here. He can
22 explain in more detail the relevancy of this information to
23 their investigation, if you'd like to hear from him.

16:47:54 24 **THE COURT:** Well, I really didn't want to get into the
25 weeds on this. I -- it just seems, to me, this is a fairly

1 linear issue that we could resolve cleanly without getting into
2 testimony. I mean, you can -- you can discuss exactly what you
3 need, and Mr. Durrschmidt can get his file back, or Ms. Cook
4 can, and both sides' needs are accommodated.

16 : 48 : 28 5 Why -- why can't we do that?

16 : 48 : 31 6 **MR. DURFEE:** We can, Judge, and that's the interactive
7 process that this taint team process would contemplate,
8 essentially, would be: We show all the files that we have to
9 Mr. Durrschmidt and -- or whoever they want to bring over. And
10 they say, you know, these files, these are -- these are files
11 that we are asserting privilege on. We would say these are --

16 : 48 : 48 12 **THE COURT:** But you don't really have any right to
13 look at those files at all.

16 : 48 : 52 14 **MR. DURFEE:** We haven't looked at those files.

16 : 48 : 54 15 **THE COURT:** Well --

16 : 48 : 55 16 **MR. DURFEE:** But we -- what we're talking about would
17 be people who would be segregated from the investigation who
18 would be, at that point, pro -- under a protective order. It's
19 my understanding that these kind of --

16 : 49 : 04 20 **THE COURT:** Why can't a judge look at them?

16 : 49 : 06 21 **MR. DURFEE:** We're happy for the judge to do that, as
22 well, Judge. We'd be happy for Judge Johnson, who issued the
23 search warrant, to do the file review on these matters of
24 privilege and make --

16 : 49 : 16 25 **THE COURT:** Would that work?

16:49:21 1 **MR. DURRSCHMIDT:** Judge, normally, before a judge
2 review is ordered, there has to be a basis for the review, and
3 we've heard no basis for any review.

16:49:32 4 This is a retainer, first day. Everything that
5 follows that is outside the investigation. There was either
6 money in the account, or there wasn't money in the account.
7 Everything after that is irrelevant here.

16:49:44 8 **THE COURT:** Money in whose account?

16:49:45 9 **MR. DURRSCHMIDT:** Their -- the retainer account, the
10 IOLTA account. Their argument is that Mr. Woodfill took a
11 \$75,000 retainer, deposited it into his IOLTA account, that the
12 IOLTA account had a negative balance; therefore, Mr. Woodfill
13 misappropriated funds.

16:50:00 14 That's the beginning, the middle and the end of the
15 investigation. What happened after that, vis-a-vis the divorce,
16 vis-a-vis the communications regarding her divorce, her child,
17 her custody issues is irrelevant, and they shouldn't look at
18 them. Nobody should look at these until there's a basis.

16:50:17 19 There's no fraud crime exception. Ms. Cook is accused
20 of nothing.

16:50:22 21 **THE COURT:** I understand that, but her attorney is,
22 and in an agency relationship, things get a little complicated.

16:50:28 23 **MR. DURRSCHMIDT:** But -- but this is why I get back to
24 the point of the only issue that they've identified is that
25 initial deposit. The deposit, the financial arrangement, the --

1 has nothing to do with the divorce file.

16:50:44 2 It's all --

16:50:44 3 **THE COURT:** See, but I don't know if there were
4 subsequent correspondence about, "I need more money from you,
5 Ms. Cook," or, "I'm going to refund this money to you,
6 Ms. Cook," or anything like that. I -- I just don't know.

16:50:57 7 Most attorneys, fee arrangements are pretty important,
8 and they do tend to generate communications.

16:51:06 9 **MR. DURRSCHMIDT:** Result- -- resulting, in this case,
10 in a flat fee at the end of the day.

16:51:11 11 **THE COURT:** Is the case over?

16:51:12 12 **MR. DURRSCHMIDT:** No. It's still pending. That's why
13 we need the file. There's a flat fee case. It turned into a
14 flat fee case. Mr. Woodfill agreed to carry the case forward
15 and charge no -- no further fees.

16:51:23 16 **THE COURT:** Was that the initial --

16:51:25 17 **MR. DURRSCHMIDT:** It was not the initial agreement,
18 no.

16:51:27 19 **THE COURT:** What was the initial agreement?

16:51:28 20 **MR. DURRSCHMIDT:** The initial agreement was an hourly
21 base fee arrangement.

16:51:37 22 **THE COURT:** I guess we're going to need some
23 testimony.

16:51:39 24 Do you want to call your witness, then?

16:51:43 25 **MR. DOUGLAS:** Sure, Your Honor. I'm going to call

Mr. Douglas Direct of Bryan Vaclavik

1 Bryan Vaclavik.

2 **THE COURT:** Okay. If you would make your way up here,
3 Mr. Rivera will administer the oath before you take your seat.

4 (Witness sworn.)

5 **THE COURT:** Okay. That'll be your seat (indicating).
6 Try to speak so you can -- try to adjust the mic so you can
7 speak directly into it.

8 Okay. You may inquire.

9 **MR. DOUGLAS:** Sure.10 **THE COURT:** And try to adjust the mic so you can speak
11 directly into it, also.12 **MR. DOUGLAS:** All right.13 **RYAN VACLAVIK, DULY SWORN, TESTIFIED:**14 **DIRECT EXAMINATION**15 **BY MR. DOUGLAS:**16 **Q** Mr. Vaclavik, if you could, tell us your full name and your
17 title.18 **A** My name is Bryan Scott Vaclavik. My last name is spelled V,
19 as in Victor, A-C-L-A-V, as in Victor, I-K. I'm currently
20 employed with the Harris County District Attorney's Office as
21 the chief fraud examiner in the white collar or financial crimes
22 division.23 **Q** And what's been your role in --24 **THE COURT:** Wait. Before -- how long have you been
25 there?

Mr. Douglas Direct of Bryan Vaclavik

1 6 : 5 2 : 3 9 1 **THE WITNESS:** I've been in the office, on and off, for

2 25 years.

1 6 : 5 2 : 4 2 3 **THE COURT:** Can you walk me through your credentials
4 as an examiner?

1 6 : 5 2 : 4 6 5 **THE WITNESS:** Yes. I have a BS in finance, as well as
6 an MBA in accounting and finance. I've been certified as an
7 expert witness in state court over 50 times.

1 6 : 5 2 : 5 5 8 **THE COURT:** Do you have a CFE designation?

1 6 : 5 2 : 5 7 9 **THE WITNESS:** Yes, sir, I do.

1 6 : 5 2 : 5 8 1 0 **THE COURT:** Thank you.

1 6 : 5 2 : 5 9 1 1 **BY MR. DOUGLAS:**

1 6 : 5 3 : 0 0 1 2 **Q** And could you talk to us about what you can, that's not
13 privileged, with regard to this case in your investigation
14 beyond the \$75,000 that opposing counsel's already mentioned?

1 6 : 5 3 : 1 1 1 5 **A** To respond to the 50- -- \$75,000 initial payment, I think
16 they're referring to a example that I showed Ms. Cook when we
17 met with her that particular day in January. It does not begin,
18 the middle, and end with the \$75,000.

1 6 : 5 3 : 2 8 1 9 That was part of why we were trying to find out whether or
20 not Ms. Cook could provide us with all her invoices that she
21 received from Mr. Woodfill. And we even subpoenaed her for
22 those records, and we've yet to get them from her.

1 6 : 5 3 : 4 3 2 3 **Q** And so this is the January 18th, 2019 --

1 6 : 5 3 : 4 7 2 4 **THE COURT:** You've subpoenaed whom?

1 6 : 5 3 : 4 9 2 5 **THE WITNESS:** Ms. Cook.

Mr. Douglas Direct of Bryan Vaclavik**BY MR. DOUGLAS:**

1 6 : 5 3 : 5 1 1
2 Q So we have outstanding subpoenas --

1 6 : 5 3 : 5 3 3
A Yes.

1 6 : 5 3 : 5 3 4
Q -- she's not responding to?

1 6 : 5 3 : 5 5 5
6 THE COURT: And those are for what? Tell me again,
for her other fee communications?

1 6 : 5 3 : 5 8 7
8 THE WITNESS: For the invoices that Mr. Woodfill
provided her.

1 6 : 5 4 : 0 1 9
10 THE COURT: And were those before or after the \$75,000
payment, or both?

1 6 : 5 4 : 0 4 11
THE WITNESS: They were way after. They were after.

BY MR. DOUGLAS:

1 6 : 5 4 : 0 7 13
Q How long has this divorce case been going on?

1 6 : 5 4 : 1 1 14
A I want to say since 19- -- since 2013.

1 6 : 5 4 : 1 5 15
Q 2013.

1 6 : 5 4 : 1 5 16
17 And so the \$75,000 that we've been speaking about earlier
was paid at the beginning of that term, that period?

1 6 : 5 4 : 2 3 18
A Correct.

1 6 : 5 4 : 2 4 19
Q And these other invoices have followed?

1 6 : 5 4 : 2 7 20
A Yes.

1 6 : 5 4 : 2 7 21
22 Q Okay. And that's what -- part of what we're looking at in
reviewing a privilege log for this particular file?

1 6 : 5 4 : 3 7 23
A Yes.

1 6 : 5 4 : 3 8 24
Q Okay.

1 6 : 5 4 : 4 0 25
THE COURT: Do you want any cross?

16 : 54 : 42 1 **Mr. Durrsschmidt Cross of Bryan Vaclavik**

16 : 54 : 42 2 MR. DURRSCHMIDT: Yes, please.

16 : 54 : 43 3 **CROSS-EXAMINATION**

16 : 54 : 46 4 **BY MR. DURRSCHMIDT:**

16 : 54 : 50 5 **Q** Is the investigation of -- financial investigation of
Mr. Woodfill?

16 : 54 : 50 6 **A** Yes.

16 : 54 : 50 7 **Q** Is the investigation of Ms. Cook?

16 : 54 : 53 8 **A** No. Ms. Cook is not involved, no.

16 : 54 : 55 9 **Q** Is there any allegation that she was engaged in any kind of
10 fraud with Mr. Woodfill?

16 : 55 : 01 11 **A** No.

16 : 55 : 03 12 **Q** Does the -- your investigation simply need the invoices that
13 Mr. Woodfill sent to Ms. Cook?

16 : 55 : 10 14 **A** I don't know what else we're going to see in those files.

15 Is it just financials? Is it payment plans? I don't know
16 what's in there, so I couldn't tell you one way or the other.
17 We need to look at it.

16 : 55 : 22 18 **Q** Other than financial terms, i.e., invoices, payment plans,
19 fee agreements, fee arrangements, are there any other documents
20 that you need for your investigation?

16 : 55 : 31 21 **A** Not at this time for me, no. I don't know what the
22 prosecutors would want to look at.

16 : 55 : 36 23 **THE COURT:** But the communications between a lawyer
24 and a client are absolutely privileged. How does the state
25 propose to deal with that issue?

Mr. Durrsschmidt Cross of Bryan Vaclavik

1 6 : 5 5 : 4 5 1
THE WITNESS: That is out of my realm. That's

2 Mr. Brewer's involvement, not mine.

1 6 : 5 5 : 5 2 3
BY MR. DURRSCHMIDT:

1 6 : 5 5 : 5 2 4
Q To the extent that you got invoices that were redacted to
5 extract privileged communication, would that satisfy your need
6 for the time being?

1 6 : 5 6 : 0 1 7
A I believe the unredacted is what we're looking for.

1 6 : 5 6 : 0 5 8
THE COURT: Would the -- let me -- are you saying
9 there's privileged information in the -- in the invoices?

1 6 : 5 6 : 1 3 10
MR. DURRSCHMIDT: Your Honor, I haven't seen the
11 invoices, so I don't know. If you were to look at my invoices,
12 there is a lot of information in my invoices. I don't know what
13 Mr. Woodfill's invoices look like.

1 6 : 5 6 : 2 3 14
THE COURT: Did you consider proceeding by -- by
15 subpoenaing Ms. Cook's records and not Mr. Woodfill's records?

1 6 : 5 6 : 3 0 16
THE WITNESS: We wanted to talk to Ms. Cook outside of
17 Mr. Woodfill knowing, so that's why she was subpoenaed.

1 6 : 5 6 : 4 2 18
THE COURT: Any further questions?

1 6 : 5 6 : 4 3 19
BY MR. DURRSCHMIDT:

1 6 : 5 6 : 4 3 20
Q You're aware that that subpoena of Ms. Cook was put on hold
21 because of the January 18th, 2019, meeting?

1 6 : 5 6 : 5 1 22
A I believe Mr. Polland accepted service on her behalf. At --
23 what transpired between Mr. Brewer and Mr. Polland, I do not
24 know.

1 6 : 5 7 : 0 0 25
Q Okay.

16:57:01 1 **THE COURT:** I didn't follow that. What now? What did
2 Mr. Polland do?

16:57:05 3 **MR. DURRSCHMIDT:** The issue --

16:57:06 4 **THE COURT:** Who does he represent?

16:57:07 5 **MR. DURRSCHMIDT:** The issue was that the outstanding
6 subpoena, as I understand it, was put on hold because of the
7 meeting between Mr. Brewer, Mr. Polland and Ms. Cook --

16:57:20 8 **THE COURT:** Okay. And who does Mr. Polland represent?

16:57:22 9 **MR. DURRSCHMIDT:** She -- he represented Ms. Cook
10 earlier in trying to get the files back.

16:57:27 11 **THE COURT:** In trying to deal with this issue, or in
12 the divorce?

16:57:30 13 **MR. DURRSCHMIDT:** This issue.

16:57:31 14 **MS. COOK:** This issue, uh-huh. This issue.

16:57:33 15 **THE COURT:** Who represents Mr. Woodfill?

16:57:36 16 **MR. DURRSCHMIDT:** I don't know.

16:57:38 17 **THE COURT:** We don't know that yet?

16:57:41 18 **MR. DOUGLAS:** I don't know.

16:57:41 19 **MR. DURRSCHMIDT:** Your Honor, it seems to me -- well,
20 I have nothing further.

16:57:44 21 **THE COURT:** Any further questions?

16:57:45 22 Any redirect?

16:57:47 23 **MR. DOUGLAS:** No.

16:57:47 24 **THE COURT:** You may step down. Thank you very much.

16:58:00 25 There -- this case raises a lot of tricky

1 jurisdictional issues, including *Younger*, that I'd rather avoid
2 if we -- if we can, as this cries out for a -- a practical
3 rather than a technically legal solution.

16:58:25 4 Can we generate some options?

16:58:30 5 **MR. DOUGLAS:** Well, Your Honor, I mean, as Mr. Durfee
6 has mentioned earlier, we certainly stand ready to -- to review,
7 with opposing counsel, the files and to make a determination of
8 those things that can go forward -- back to Ms. Cook.

16:58:47 9 **MR. DURFEE:** And, Your Honor, the other thing, the
10 exigency here is going to be restoration of the files so they
11 can proceed with their litigation. We're perfectly happy to
12 produce all the files back in copies or the originals, with us
13 keeping copies.

16:59:02 14 **THE COURT:** I think they deserve the originals back
15 with you keeping copies of whatever may be relevant to your
16 inquiry. Has a judge offered -- the judge in the state court
17 offered to do any of this privileged review?

16:59:13 18 **MR. DURFEE:** She's not been asked, and -- but I
19 know -- I know Judge Johnson well. She would -- she would take
20 this on.

16:59:21 21 **THE COURT:** That seems, to me, that -- it seems to me
22 that judge ought to carry the freight in this case rather than
23 this judge.

16:59:31 24 **MR. DURRSCHMIDT:** Judge, it seems to me that the
25 county has the burden to show that there's a reason -- a

1 legitimate reason for the entirety of the file. The testimony
2 today was they needed the invoices; they needed the payments.
3 They have redacted invoices, and they have the payments. So I
4 don't know why they need anything more. They have everything
5 that they need.

16:59:55 6 They need to give the entire file back. They can't
7 maintain it. The problem is: What happens if the husband comes
8 in with a Freedom of Information Act request to see the files?
9 What happens if somebody has seen them? They stand up here and
10 say, "We haven't looked at them." We don't know whether they
11 have or they haven't.

17:00:10 12 And they're not entitled to these files. These files
13 ought to come back. The originals should come back with no
14 copies kept anywhere over at the county. It's privileged. It's
15 private. It's her property.

17:00:22 16 We've got Fourth Amendment; we've got Fifth Amendment
17 rights here that are being trampled on.

17:00:27 18 **THE COURT:** I'm not quarreling with anything you say.
19 I just don't know if this is the right place to resolve those
20 Fourth Amendment and 14th amendment issues.

17:00:35 21 **MR. DURRSCHMIDT:** Well, if I can't bring a Fourth and
22 Fifth Amendment cause of action under 1983 to this Court --

17:00:40 23 **THE COURT:** Tell me how I get around *Younger v.*
24 *Harris.*

17:00:43 25 **MR. DURRSCHMIDT:** Because I think that 1983 says that

1 you have the jurisdiction to hear it, and I think that gets you
2 around *Younger*. There is no other proceeding involving this
3 woman. There's no criminal proceeding involving this woman.
4 There's a criminal proceeding involving a third party.

17:00:59 5 If Woodfill was in here saying, "Hey, give it back,"
6 and they were screaming *Younger*, I'd understand it. They're not
7 trying to bring a claim against Ms. Cook. *Younger* doesn't apply
8 here.

17:01:15 9 **THE COURT:** Well, the reason *Younger* might is what if
10 I issue an order, and the judge in state court issues a
11 conflicting order?

17:01:26 12 **MR. DURRSCHMIDT:** I think -- I think that, to the
13 extent there's a discovery request, right, that discovery
14 request can be taken up over there. This is not a discovery
15 request. This was a seizure. This was an overly broad search
16 warrant.

17:01:47 17 They know they've got way more than they want. They
18 don't want the files. They don't want -- what they want is they
19 want a waiver of her privilege, and they want her to file a
20 complaint.

17:01:56 21 She hasn't filed a complaint. She's not going to file
22 a complaint.

17:02:00 23 **THE COURT:** If I had issued this order rather than the
24 judge in state court, could the state court then override my
25 order?

17:02:10 1 **MR. DURRSCHMIDT:** I don't think so. I think that the
2 supremacy clause is going to control here, and I think that 1983
3 gives you the jurisdiction to consider a Fourth and a Fifth
4 Amendment right, which is exactly what we've brought, and we
5 need to bring this here and not in the county. We need to have
6 somebody that's impartial that can look at this and say, "Wait.
7 What are you doing?"

17:02:37 8 Think about this. The state court judge had the
9 opportunity to say, "Wait. Before I issue a search warrant on a
10 law firm, I need to temper it." She didn't. She issued a
11 blanket search warrant that said get all the files.

17:02:51 12 **THE COURT:** Well, I understand what you're saying, but
13 I do recall that there was a federal judge that issued a
14 subpoena for President Trump's personal lawyer, who took all of
15 his files, and there didn't seem to be any federal inhibition in
16 doing that. I think some of us were startled by that, that a
17 federal court would do it, but the law, in terms of lawyer files
18 and alleged criminal violations, is a little murky right now.

17:03:21 19 I'm going to take a minute to talk to my colleagues.
20 No one need rise.

17:03:25 21 *(Recess taken from 5:03 p.m. to 5:08 p.m.)*

17:08:24 22 **THE COURT:** Keep your seat. That's all right.
17:08:29 23 Okay. I'll make this offer: I'm happy to be the
24 officer who does the review of the file, and I'll do so
25 expeditiously, if you can agree on that. If we're not going to

1 do that, I need to take this under advisement. This raises
2 some -- if we're not going to work out a practical non- --
3 non-jurisprudential resolution, I'm going to need some time to
4 deal with these issues.

17:08:54 5 I just got the defendant's response this afternoon. I
6 want to give both sides a fair adjudication. So I'll plan to do
7 that, but I'm willing to help in any way that I can and -- just
8 reviewing the file. I'll do it in the morning. I'll get it
9 out, if that would be agreeable.

17:09:16 10 **MR. DURRSCHMIDT:** Judge, my understanding is there's
11 127 boxes. There's -- this -- this is what I'm talking about is
12 that this file is huge, and for them to say they need the
13 financial records and take 127 boxes -- I don't think you can do
14 it in the morning, is my point.

17:09:40 15 And I think my second point is if we can't work --

17:09:43 16 **THE COURT:** If I'm just looking for invoices, I think
17 I can.

17:09:46 18 **MR. DURRSCHMIDT:** Well, I'm happy -- I'm happy to turn
19 over the invoices, redact them where I think they need to be
20 redacted, and the checks, and they can give me back the files.

17:09:56 21 **THE COURT:** Do you currently have the invoices?

17:09:57 22 **MS. COOK:** I can get them.

17:09:59 23 **MR. DURRSCHMIDT:** We can get them, Your Honor.

17:10:05 24 **MS. COOK:** They have them.

17:10:05 25 **MR. DURRSCHMIDT:** Your Honor, I think they've got

1 them.

17:10:07 2 **MS. COOK:** They showed them to me.

17:10:07 3 **MR. DURRSCHMIDT:** They -- my client says they showed
4 them to her.

17:10:11 5 **THE COURT:** Okay. Well, then, let's do that.

17:10:17 6 *(Sotto voce discussion amongst all defense counsel.)*

17:10:24 7 **MR. DURFEE:** Your Honor, Mr. Brewer is not available.
8 He just completed a -- that Antonio Armstrong, Jr. --

17:10:28 9 **THE REPORTER:** I'm sorry? I'm sorry.

17:10:31 10 **THE COURT:** Come forward. Your voice is not traveling
11 well.

17:10:36 12 **MR. DURFEE:** Yeah. Sorry, Judge.

17:10:36 13 Mr. Brewer, who is the lead investigator -- lead
14 prosecutor on this matter, is not available. He was the lead
15 prosecutor in that Antonio Armstrong, Jr., trial that just
16 finished with the mistrial over in state district court.

17 He's -- he's out today.

17:10:50 18 What I would like is an opportunity to consult with
19 him and then -- and then communicate with the two of you as to
20 your kind offer and express an opinion one way or the other.

17:11:00 21 **THE COURT:** Let's get a date. Let's get a time on our
22 calendar when we're going to get back and at least hold hands
23 together. We can do it by telephone if you can't make it over
24 here in person.

17:11:09 25 **MR. DURFEE:** No, I can come over, Judge.

17:11:11 1 **MR. DURRSCHMIDT:** It's easy for me to come over as
2 well, Your Honor.

17:11:13 3 **THE COURT:** Okay. Late afternoon sometime this week.
4 We have several evidentiary trials going on -- evidentiary
5 hearings.

17:11:21 6 Sometime later this week, Art?

17:11:24 7 **MR. DURRSCHMIDT:** You want to say Wednesday, the 1st?

17:11:25 8 **THE COURT:** That works for me.

17:11:30 9 **THE CASE MANAGER:** We have the Wheeler class cert.

17:11:33 10 **THE COURT:** Yeah. But can't we do, like, 4:30 or
11 something?

17:11:37 12 **THE CASE MANAGER:** 4:30.

17:11:38 13 **THE COURT:** 4:30 on Wednesday.

17:11:41 14 **MR. DURFEE:** Thank you, Your Honor.

17:11:42 15 *(Proceedings concluded at 5:11 p.m.)*

16 -00-

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above matter.

19
20 Date: May 29, 2019

21 /s/ Heather Alcaraz
22 Signature of Court Reporter
23
24
25